IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.Rev.Pet.No. 1608 of 2002()

CRA.159/1998 of SESSIONS COURT, MANJERI
CC.641/1992 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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REVN. PETITIONER: APPELLANT/ACCUSED

SUNIL KUMAR, S/O. VASU,
PARANGOT HOUSE, KARUVATTUR, VIA.KOZHIKDOE.

BY ADV. SRI.T.G.RAJENDRAN
SMT.K.A.ANURAMA

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. THE CIRCLE INSPECTOR OF POLICE,
TIRURANGADI.

2. STATE OF KERALA, REP; BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP1608/02

ORDER ON CRL.M.P.NO.8767/02 IN CRL.R.P.NO.1608/02

DISMISSED

13.11.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.1608 of 2002

Dated this the 14th day of November, 2007

O R D E R

The revision petitioner is the accused in C.C.No.641/92 with respect to the offence under Sections 279, 337, 338 and 304 (A) IPC and under Section 66 read with Section 192 of M.V. Act and sentenced to undergo R.I. for two years and to pay a fine of Rs.5,000/- and in default, to undergo R.I. for three months for the offence under Section 304(A) IPC and also sentenced to undergo R.I. for 1½ years and to pay a fine of Rs.1,000/- and in default, to undergo R.I. for one month for the offence under Section 338 IPC and to undergo R.I. for three months and to pay a fine of Rs.500/- and in default, to undergo R.I. for one month for the offence under Section 337 IPC. No separate sentence is awarded for the offence under Section 279 IPC.

2. The prosecution case is that on 7.6.1992 at about 2.45 p.m., the accused drove the bus bearing registration No.KRM 3862 in a rash and negligent manner so as to endanger human life through NH 17 and when it reached near the Kakkad

junction dashed against a jeep bearing registration No. KLL.3536 and as the result of which the three passengers and driver of the jeep sustained injuries and succumbed to the same.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 14 and Exts. P1 to P21.

4. PWs' 1 and 2 are the occurrence witnesses to the incident. They were travelers in the jeep. PW3 is the owner of the jeep and PW4 is a witness to the inquest report of two of the deceased and PW5 is the brother of one of the deceased who has identified the dead body. PW6 is an attestor to scene mahazar which is marked as Ext. P4. PWs' 7 and 8 are the doctors who conducted the postmortem examination of the body of the deceased. PW2 sustained injuries in the accident. PW9 is the doctor who issued the discharge certificate of CW3 who had sustained fracture of shaft of right humerus. PW10, the Sub Inspector, who registered the FIR and prepared the inquest report of two of the deceased. PW11 is the Circle Inspector of Police who prepared the inquest report i.e., Exts. P2 and P3. PW12 is the Joint RTO who inspected both the vehicles and issued Exts. P18 and 19 reports of both the vehicles and it is

mentioned that there are no mechanical defects to both the vehicles. PW13 is the police constable who shifted the dead body from the scene of occurrence to the hospital. PW14, the Sub Inspector, who investigated the case. He has stated that the accused surrendered before the police. PW14 has proved Ext. P20 trip sheet which shows that it was the accused who drove the bus at the time. It was he who conducted the investigation and filed the charge sheet. The courts below have noted that it is the evidence of PWs' 1 and 2, the occurrence witness, that the jeep was driven in normal speed and the bus was in over speed. PW20 has stated that the bus came overtaking an autorickshaw through the wrong side and hit on the right side of the jeep. In the cross examination of PW14, the investigating officer, has stated that the witnesses have stated when questioned that the bus overtook an autorickshaw and hit on the jeep. As per Ext. P4 scene mahazar the incident took place on the wrong side of the bus. The bus was proceeding from north to south and the jeep in the opposite direction. The scene of occurrence is at 3.60 mtrs. towards the west from the eastern tar end and 2.40 mtrs. towards the east from the western tar end and the road has a

width of six meters. Damages noted on the jeep in the scene mahazar and in AMVI report are on the right side of the jeep. In the circumstances and in view of the fact that the bus was at its wrong side the findings of the court below are not liable to be interfered. It is pointed out that PW1 has admitted that there were 14 passengers in the jeep. The counsel has pointed out that the jeep was heavily overloaded and hence a driver would not have proper control over the vehicle. But in view of the evidence that the jeep was in its right side and the bus was on the wrong side the above contention is not much relevant. The conviction is confirmed.

5. The counsel for the revision petitioner has pleaded for leniency and sought for modification of the sentence pointing out that the incident has taken place on 7.6.1992 i.e., about 15 years back and so far the accused was facing the criminal proceedings and that his family is depending on his income for their livelihood.

6. In the circumstances, the sentence imposed for the offence under Section 304(A) IPC is modified to imprisonment till the rising of the court and to pay a compensation of

Rs.20,000/- to the legal representatives of each of the deceased and in default, to undergo simple imprisonment for six months each. No separate sentence is awarded for the rest of the offences. The revision petitioner is granted four months' time to remit the amount of compensation. He shall appear before the Judicial First Class Magistrate Court, Tirur on 13.3.2008 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl